When any person in charge of a motor vehicle on a road is required by a police officer under section 48(1) of the Road Traffic Ordinance to produce his driving licence, for examination, this does not mean that the driver is arrested nor does it mean that he is detained when particulars of his driving licence are taken. It simply means that he is asked to give particulars and naturally he is bound to be static when giving such particulars. If he refuses to give such particulars and moves on then he is liable to be arrested under section 23(i)(e) of the Criminal Procedure Code (Cap. 6).

Per Hashim J.: "I am of the opinion that the barrier put up by the police (with the words *'Berhenti Pemereksaan Polis'*) is not a traffic sign under the Traffic Signs Rules, 1959 and therefore the Rules do not apply. The police have power to erect a road barrier under section 38(1) of the Police Ordinance 1952 but in my opinion a motorist is not obliged to stop at the road barrier unless and until he is signalled to do so by the police under section 38(2) of the Police Ordinance."

CRIMINAL APPEAL.

Edgar Joseph, Jr. for the appellant.

Sheikh Abdul Rahman bin Abu Bakar (Deputy Public Prosecutor) for the respondent.

Hashim J.: The appellant was charged under section 36(1) of the Road Traffic Ordinance, 1958, that he drove the bus without due care and attention.

It is not disputed that the provisions of section 56 of the Ordinance have not been complied with. The prosecution maintained that the appellant was arrested when appellant's particulars were taken immediately after the accident. Under section 48(1) of the Ordinance any person in charge of a motor vehicle on a road shall, on being so required by a police officer produce for examination his driving licence. This in my opinion does not mean that the driver is arrested nor does it mean that he is detained when particulars of his driving licence are taken. It simply means that he is asked to give particulars and naturally he is bound to be static when giving such particulars. If he refuses to give such particulars and moves on then he is liable to be arrested under section 23(i)(e) of the Criminal Procedure Code (Cap. 6). This section sets out the various circumstances under which a person can be arrested without a warrant of arrest. In this particular case the appellant did stop immediately after the accident, his particulars were taken by the police corporal who told him he would be summoned for driving his bus without due care and attention and was then allowed to proceed. The corporal himself said he did not arrest the defendant. Under such circumstances I am of the opinion that failure to comply with the provisions of section 56 of the Ordinance is fatal in a prosecution under section 36(1) of the Ordinance.

There is another curious aspect in this case. In the police report it is stated that the appellant did not stop at the road barrier. The police report indicated that the appellant should be charged for failing to stop at the road barrier but subsequently he was charged for driving without due care and attention.

Now the question is whether the road barrier put up by the police is a traffic sign as defined in the Ordinance. According to the police report the barrier had these words written on it, "Berhenti Pemereksaan Polis". This police sign does not appear to be in the schedule to the Traffic Signs (Size, Colour and Type) Rules, 1959. Rule 3 reads:

"Subject as hereinafter provided and subject to any rules which the Minister may make under the provisions of section 138 of the Ordinance the traffic signs which may be erected under the provisions of section 65 of the Ordinance shall conform as to size, colour and type with the indications given in Parts I to VI of the Schedule hereto."

Incidentally section 138 of the Ordinance would appear to deal with liability of registered owner and others. Section 151 of the Ordinance empowers the Minister to make rules. Perhaps there is a printed error? I am of the opinion that the barrier put up by the police is not a traffic sign under the Traffic Signs Rules, 1959, and therefore the Rules do not apply. The police have the power to erect a road barrier under section 38(1) of the Police Ordinance, 1952, but in my opinion a motorist is not obliged to stop at the road barrier unless and until he is signalled to do so by the police under section 38(2) of the Police Ordinance, 1952.

The appeal is allowed and the conviction and sentence set aside.

Appeal allowed.

Provided that — (i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that — (a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or (b) the accused by his own conduct contributed to such failure; and (ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved:

Provided further that this section shall not apply in any case in which the person prosecuted was, in connection with the incident in respect of which a charge against such person is preferred, arrested either on the days on which such incident occurred or within fourteen days of such date.

YAP CHIN HOCK & ANOR. v. CHENG WANG LOONG

[O.C.J. (Ambrose J.) March 31, 1964]

[Singapore — Suit No. 381 of 1961]

Contract — Timber — Contract to supply light red meranti — Supply of light red dark red meranti — Rejection — Damages for breach of contract.

Sale of goods — Grading of timber by grader with shipping marks — Whether unconditional appropriation — Sale of Goods Act, 1893, s. 18 r. 5(1) and s. 20.

Malayan Grading Rules for Sawn Hardwood Timber, rr. 9, 11(b), 12 and 18(a).

By a contract dated April 28, 1960 the defendant agreed to supply to the plaintiffs 400 tons of light red meranti timber at $220 per ton, f.o.b. Singapore, at the rate of 100 tons per month during June to August 1960 and 100 tons between September 1 and 20, 1960. It was one of the terms of the contract that grading of the timber was to be done in accordance with the Malayan Grading Rules for Sawn Hardwood Timber under the supervision of the Department of Forestry. In June 1960 the defendant tendered a parcel of 50 tons of timber. 10 tons of this parcel were graded by the plaintiffs' grader and marked with the plaintiffs' shipping marks. The parcel was found by the Department of Forestry to include dark red meranti. The plaintiffs made several requests to the defendant to produce light red meranti, but the defendant failed to do so. On September 29, 1960 the plaintiffs gave the defendant written notice of cancellation of the contract. The plaintiffs claimed damages for breach of contract and the return of their deposit. The defendant counterclaimed for loss alleged to have been suffered as a result of breaches of contract committed by the plaintiffs. The main questions for the consideration of the court were (i) whether the parcel of 50 tons tendered by the defendant in June 1960 was entirely light red meranti or whether it included any dark red meranti, (ii) whether the parcel was rejected by the plaintiffs, (iii) whether the marking of 10 tons with shipping marks by the plaintiffs' grader constituted unconditional appropriation within the meaning of rule 5(1) in section 18 of the Sale of Goods Act, (iv) whether the plaintiffs committed a breach of contract by failing to send a grader to grade the timber, (v) whether the plaintiffs committed a breach of contract by failing to send a request to the Forest Department for check-grading, (vi) whether the plaintiffs committed a breach of contract by failing to nominate a ship.

Held: (1) the parcel of 50 tons tendered in June 1960 included dark red meranti and was not entirely light red meranti;

(2) there was no hope of persuading the Forest Department to pass the timber as light red meranti the plaintiffs wanted the defendant to produce actual light red meranti and rejected the 50 tons tendered in June 1960;

(3) the marking of the 10 tons with shipping marks merely constituted preparation for shipment and not appropriation under rule 5(1) in section 18 of the Sale of Goods Act;

(4) the plaintiffs did not commit a breach of contract by failing to send a grader to grade the timber;

(5) the plaintiffs did not commit a breach of contract by failing to get check-grading done by the Forest Department;

(6) the plaintiffs did not commit a breach of contract by failing to nominate a ship.

Case referred to:—

(1) *Federspiel* v. *Twigg* [1957] 1 Lloyd's Rep. 240.

ACTION.

D. G. Ironside for the plaintiffs.

Punch Coomaraswamy for the defendant.

Ambrose J.: This was an action for damages for breach of a contract for the sale of 400 tons of light red meranti timber at $220 per ton, f.o.b. Singapore, and for return of a deposit.

By the contract, which was in writing and dated the 28th April, 1960, the defendant agreed to supply the timber to the plaintiffs at the rate of 100 tons per month during June, July and August, 1960, and 100 tons between the 1st and the 20th September, 1960.

The allegations in the statement of claim were these. In June, 1960, the defendant tendered a parcel of approximately 50 tons of dark red meranti. This was rejected by the plaintiffs. Despite requests made by the plaintiffs, the defendant failed to produce any light red meranti subsequently. By notice in writing dated the 29th September, 1960, the plaintiffs gave the defendant notice of cancellation of the contract.

The allegations in the defence were these. By the terms of the contract the grading of the timber was to be done by the plaintiffs under the supervision of the Department of Forestry. On or about the 9th June, 1960, the plaintiffs' manager and grader attended at the defendant's timber yard and graded, accepted and put the plaintiffs' marks on about 10 tons of light red meranti. In June, July, August and September, 1960, the defendant repeatedly asked the plaintiffs' agent, Chan Lee Wah, at the defendant's timber yard to send a grader to grade the whole of the 400 tons of light red meranti which was to be supplied by the defendant under the contract. Chan Lee Wah said that he could not find a grader and failed to send a grader. Further the defendant frequently requested Chan Lee Wah to name a ship for delivery of the light red meranti but the plaintiffs failed to do so.

The contract provided that grading was to be done by or under the supervision of the Department of Forestry. In their reply the plaintiffs disputed the point taken by the defendant, that the grading was to be done by the plaintiffs under the supervision of the Department of Forestry. But at the trial they conceded the point.

The other allegations in the reply were these. The plaintiffs' grader graded and marked with their marks about 10 of the 50 tons tendered by the defendant in June, 1960. The Department of Forestry examined and certified the 10 tons to be other than light red meranti, and refused to approve the grading done by the plaintiffs' grader. The parcel of 50 tons was accordingly rejected by the plaintiffs.

It was not disputed that the defendant informed Chan Lee Wah, the plaintiffs' representative, early in June, 1960, that he had about 50 tons of timber as regards the contract for 400 tons.

The plaintiffs' representative, whom I will call Chan, arranged for a grader named Peters to be sent from Kuala Lumpur to Singapore. Chan took Peters to the Forest Department on the 13th June, 1960, to see Ahmad Kamal, the

Timber Officer in charge of the department in Singapore. Peters had to inform the department that he had come to Singapore to do the grading. The department had received on the 7th May, 1960, a copy of the contract for 400 tons. Peters told Kamal that he would commence grading on the 14th June, 1960, at the defendant's sawmill.

On the 13th June, 1960, Kamal instructed Pinto, the Senior Timber Inspector, to keep a close supervision on the work of Peters and report to him. Kamal gave this instruction because Peters had been suspended once in the Federation of Malaya for bad grading.

The first question I considered was whether the parcel of 50 tons tendered by the defendant in June, 1960, was entirely light red meranti or whether it included any dark red meranti. Peters started the grading on the 14th June, 1960. He graded about 10 tons and put the plaintiffs' shipping marks on the timber he was grading and left about 12 noon for lunch. Pinto arrived after Peters had left and met the defendant's foreman. He saw about 15 tons of timber in the timber shed which, in his opinion, could only accommodate 25 tons. He saw no other timber there. He observed that Peters had graded and marked about 10 out of the 15 tons. In supervising the grading Pinto's concern was to see whether Peters had made any mistake. Pinto observed that there was some dark red meranti in the 10 tons which had been graded and marked by Peters. He also formed the opinion that 60% of the 15 tons was dark red meranti. Pinto told the foreman that grading could not be done as the grader had made a mistake. In the presence of the foreman, Pinto took two samples from the 10 tons which had been graded by Peters and one sample from the 5 tons which had not been graded. In Pinto's opinion the samples were typical samples of dark red meranti. Pinto reported to Kamal on the 14th June, 1960, that 60% of the 15 tons was dark red meranti and contrary to the contract; that Peters graded dark red meranti as light red meranti; that Pinto took 3 samples and stopped the grading as it was contrary to the contract. Pinto produced the samples to Kamal. And Kamal, who was very familiar with all timbers exported from the local market and could readily distinguish between dark and light red meranti, identified the 3 samples as dark red meranti. One of these samples was sent to the Wood Technologist at the Forest Research Institute, Kepong, and found by him to be dark red meranti.

Peters returned with Chan about 3 p.m. on the 14th June. According to Chan's evidence, which I accepted, Peters was informed by the defendant in Chan's presence that the Forest Department had given instructions to stop the grading. It seemed to me that the defendant's foreman must have told the defendant what Pinto had told him.

Chan went to see Kamal on the 15th June, 1960. Kamal told him that the parcel of timber presented for grading was dark red meranti and contrary to the contract and therefore grading could not be continued.

Chan telephoned the plaintiffs' manager, Leong Kong Kee, and he came to Singapore from Kuala Lumpur on or about the 18th June, 1960. They saw Kamal. Kamal told Leong that the grading was stopped because the timber was not light red meranti as required by the contract. Chan and Leong saw the defendant and told him what Kamal had told them.

It was contended by counsel for the defendant that the 5 tons which Pinto said he saw next to the 10 tons which had been graded by Peters had nothing to do with the contract. The defendant's evidence in his examination-in-chief was that in the grading area in the timber shed on the 14th June, there were 6 to 7 tons of dark red meranti which were meant for retail sales to local Shanghainese furniture dealers, who would buy a ton or two at a time. The defendant's demeanour gave me the impression that he was not telling the truth. In cross-examination he said there were 10 to 20 tons of timber to be graded by Peters in the shed. He admitted that he had a very limited space for grading; that he wanted grading to proceed as fast as possible; that he made available for grading on each occasion the whole area available for grading; and that there were 15 tons in the grading area on the 14th June, 1960, when Peters did the grading. In the light of these admissions it seemed to me that the 6 or 7 tons of dark red meranti which the defendant said were in the grading area formed part of the 15 tons offered to Peters for grading.

If the defendant really had 6 or 7 tons of dark red meranti which were meant for local furniture dealers in the grading area apart from 15 tons of timber which were offered to Peters for grading, he would have mentioned it to Chan and Leong when they told the defendant on or about the 18th June, 1960, what Kamal had told them. According to Chan's evidence, which I accepted, the defendant's reaction to what they told him then was that the grading was stopped perhaps because the Forest Department was not happy to see the plaintiffs, who were a Kuala Lumpur firm, buying timber in Singapore.

I was asked by counsel for the defendant to treat Pinto's evidence as worthless against the defendant. It was said that Pinto was not concerned with the parties and that he was not doing check-grading but that he was supervising the work of Peters as a grader from the Federation of Malaya for the purpose of indorsement of his licence. It seemed to me, however, that even if Pinto was there merely to supervise the grading done by Peters his evidence as to whether the 15

tons offered to Peters for grading in the defendant's grading area contained any dark red meranti was very important. It was stressed that when Pinto went to the grading area neither Peters nor the defendant was there. But it has to be borne in mind that the defendant's foreman was there, and that he did not tell Pinto that any part of the timber in the grading area was meant for local furniture dealers and had nothing to do with the plaintiffs' contract, even when Pinto took a sample from the 5 tons which Pinto said he saw next to the 10 tons which had been graded by Peters. I was satisfied that those 5 tons formed part of the 15 tons which were offered to Peters for grading. I saw no reason to disbelieve Pinto's evidence and I accepted his estimate that 60% of the 15 tons consisted of dark red meranti. It seemed to me that the defendant's evidence that there were 6 or 7 tons of dark red meranti in the grading area that day supported Pinto's evidence. And I accepted Pinto's evidence that apart from the 15 tons he saw in the grading area there was no other timber in the defendant's timber shed. Here it must be stated that the defendant, according to his own evidence, had no open timber yard next to his sawmill and had only a timber shed for timber which had been cut. He estimated that it could accommodate 50 tons of cut timber. But I preferred Pinto's estimate, which was that it could accommodate only 25 tons.

The 50 tons tendered by the defendant in June, 1960, consisted of 15 tons in the defendant's timber shed at his sawmill at Lorong Lalat and about 35 tons in his storing shed at Lorong 19, Geylang, which according to Pinto could hold about 60 tons in 1960. As 60% of the 15 tons consisted of dark red meranti, I came to the conclusion that the parcel of 50 tons included dark red meranti and was not entirely light red meranti.

The second question I considered was whether the parcel of 50 tons tendered in June, 1960, was rejected by the plaintiffs. According to Leong's evidence, which I accepted, on or about the 18th June, 1960, Leong told the defendant that either he should get the Forest Department to pass the timber as light red meranti before the plaintiffs could accept it or he should produce actual light red meranti; and that if he failed to do so the plaintiffs would cancel the contract. According to the defendant, Leong said nothing to him and Leong never told him that his timber contained dark red meranti; and because the plaintiffs did not take the 50 tons tendered in June, 1960, he did not cut any more timber for the plaintiffs. As there was no hope of persuading the Forest Department to pass the timber as light red meranti it seemed to me clear that the plaintiffs, in fact, wanted the defendant to produce actual light red meranti and rejected the 50 tons tendered in June, 1960. Chan's evidence, which I accepted, was that the defendant said he could sell the 50 tons to others and that he would produce light red meranti, but that he failed to do so, although Chan inquired about the timber on several occasions subsequently.

It was argued by counsel for the defendant that the property in the 10 tons graded by Peters passed to the plaintiffs upon his marking them with shipping marks, as that constituted unconditional appropriation within the meaning of rule 5(1) in section 18 of the Sale of Goods Act. That rule says:

> "Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made".

Clause 7 of the contract deals with shipping marks and provides:

> "The timber to be marked by the sellers at their expense in accordance with the buyers' instructions".

It must be stressed here that the contract under consideration is an f.o.b. contract. In such a contract *prima facie* the property passes to the buyer upon shipment: 34 *Halsbury's* Laws of England, 3rd edition, p. 176. This *prima facie* inference, in my opinion, was not displaced by any of the terms of the contract. There was no suggestion in the contract that the risk passed to the buyer upon the marking of the timber with shipping marks under clause 7. Section 20 of the Sale of Goods Act whereby the ownership and the risk are normally associated says:

> "Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".

In an f.o.b. contract the risk *prima facie* passes to the buyer upon shipment: 34 *Halsbury's* Laws of England, 3rd edition, p. 176. The 10 tons which had been marked with shipping marks remained at the seller's risk after the marking. That was a *prima facie* indication that the property had not passed to the buyer. Applying the principles extracted from the authorities as to appropriation by Pearson J. in *Federspiel* v. *Twigg*,[1] I came to the conclusion that the marking of the 10 tons with shipping marks merely constituted preparation for shipment and not appropriation.

The claim for the return of a deposit was said to arise in this way. It was not disputed that the plaintiffs advanced the total sum of $18,795 to the defendant in respect of the above-mentioned contract and another contract for the sale of 50 tons of light red meranti made on the same date. The defendant was debited with

bank commissions totalling $22.35. In respect of the contract for 50 tons, the defendant delivered 48.7458 tons of light red meranti during July, 1960, for which he was entitled to $11,211.53, leaving a balance of $7,605.82. The defendant sought to reduce the balance by $599.62 without raising a counterclaim for that sum. I refused to reduce the balance as no counterclaim had been raised. The defendant also sought to deny liability for the bank commissions. It seemed to me that, as he asked for and received payments in advance when he was only entitled to receive payments upon shipment and as the plaintiffs remitted money by telegraphic transfer at his request, the defendant should pay for the expenses occasioned by his request. Furthermore counsel for the defendant intimated that as the amount involved was only $22.35 he would not take up the time of the court with arguments against the charge for bank commissions.

There was a counterclaim for loss alleged to have been suffered by the defendant as a result of breaches of contract committed by the plaintiffs. It was alleged that the plaintiffs committed a breach of the contract by failing to send a grader to grade the timber. As a matter of fact the plaintiffs did send a grader to grade the 50 tons tendered in June, 1960. One of the terms of the contract was that grading would be in accordance with the Malayan Grading Rules for Sawn Hardwood Timber and that grading would be done under the supervision of the Forest Department. Rule 11(b) of the Malayan Grading Rules provides:

> "Timber graded under these Rules by privately employed Timber Graders is subject to supervision by the Grading Authority and to percentage check (usually 10 per cent) by Timber Inspectors".

Rule 12 provides:

> "Timber Inspectors are Government Servants. Their duties under these Rules are primarily to check-grade timber that has been graded by privately employed Timber Graders (see Rule 11(b)), and to exercise a general supervision over timber grading as directed by the Grading Authority".

The Grading Authority in Singapore is the Timber Officer. The contract made it clear that the timber was being bought by the plaintiffs for export to Australia. Rule 9 provides that the export of sawn timber from Singapore to Australia is restricted to that which has been graded under the Rules by a Timber Grader and is covered by a Grading Certificate issued under rule 18(a). The timber graded by Peters was subject to supervision by Kamal, who as Timber Officer was the Grading Authority. It was the duty of Pinto as Senior Timber Inspector to exercise a general supervision over timber grading as directed by Kamal. Once it was discovered by Pinto and Kamal that the parcel of 50 tons tendered by the defendant included dark red meranti and that fact was communicated by Chan and Leong to the defendant, it was the defendant who should have taken the matter up with Kamal if he disagreed with Kamal's opinion. The defendant said that Chan and Leong did not communicate that fact to him. That struck me as incredible. I should add here that the defendant impressed me as a liar, while both Chan and Leong impressed me favourably. The fact that the defendant did not take the matter up with Kamal indicated to me quite plainly that he knew that the parcel of 50 tons included dark red meranti.

Counsel for the defendant submitted that the plaintiffs failed in their duty to send a grader because they did not send a fresh grader duly licensed. I did not see how the sending of a fresh grader could convert dark red meranti into light red meranti. Counsel also submitted that the plaintiffs failed in their duty because they did not send a request to the Forest Department for check-grading. It seemed to me ridiculous to make such a request to the Forest Department as the department could not be expected to give a Grading Certificate under rule 18(a) stating that the timber was light red meranti once it had come to know in the course of supervision that the timber was mixed with dark red meranti. The only solution was for the defendant to offer a fresh parcel of actual light red meranti for grading. That was what Chan said the defendant promised to do. And I accepted Chan's evidence as to that and also as to the defendant's failure to keep his promise.

What caused me difficulty was this sentence in the plaintiffs' letter dated the 18th October, 1960, Ex. A.B. 22:

> "unless you can provide the grader to get the check grading done, all orders have to be cancelled".

That letter was written in reply to the defendant's letter of the 12th October, 1960, Ex. A.B. 21, which was a reply to the plaintiffs' letter of the 29th September, 1960, Ex. A.B. 17, which gave notice of cancellation of the contract. Counsel for the plaintiffs suggested that the sentence meant:

> "Unless you can provide a grader who can get the Forest Department to pass your timber as light red meranti and on that basis have check-grading done, all orders have to be cancelled".

Counsel for the defendant suggested that it was the duty of the plaintiffs to get a grader to get the check-grading done and that it was not the duty of the defendant to do so. It seemed to me that before the plaintiffs could be asked to get another grader the defendant should have tendered a fresh parcel of timber for grading. The defendant admitted that he did not tender any fresh parcel of timber after the parcel of 50 tons tendered in June, 1960. The result was that I found that the plaintiffs did not commit any breach

MLJ 2005

of contract by failing to send a grader or fresh grader duly licensed to grade the timber or by failing to get check-grading done by the Forest Department.

Another allegation in the defence was that the plaintiffs committed a breach of the contract by failing to nominate a ship although the defendant at his timber yard in June, July, August and September, 1960, frequently verbally requested Chan to name a ship upon which the light red meranti was to be loaded. It seemed to me that this allegation was absurd as the defendant did not succeed in producing even one parcel of 100 tons of light red meranti.

The last question I had to deal with was the question of damages. In December, 1959, the plaintiffs entered into a contract with Ackworth & Whitehead Pty. Ltd. of Sydney, Australia, for the supply of 3000 tons of light red meranti. The defendant did not dispute that he knew that the plaintiffs entered into a contract with him for the purpose of fulfilling their obligation under their contract with Ackworth & Whitehead. If the defendant had in fact delivered the 400 tons under his contract with the plaintiffs, the plaintiffs would have made a profit of $16,200. This figure is arrived at in this way. The c.i.f. price per ton payable by Ackworth & Whitehead was £ (Sterling) 39.12.6. per ton. The net amount per ton which the plaintiffs would have realized was £(Sterling) 30. 7. 10. after deducting freight, which was £9 per ton, and insurance charge, which was 4s. 8d. per ton. At the rate of 2/4d per dollar this amount comes to $260.50 per ton. The price which the plaintiffs agreed to pay the defendant was $220 per ton. The profit which the plaintiffs would have made was $40.50 per ton. For 400 tons this works out to $16,200. Ackworth & Whitehead cancelled their contract with the plaintiffs in October, 1960, when there was a shortage of 444 tons. I accepted the evidence of Leong that the plaintiffs entered into contracts with the defendant because there was a short supply of light red meranti in the Federation of Malaya, and that normally the plaintiffs got their supply from Kuala Lumpur, Pahang and Seremban. In August and September, 1960, Leong asked Chan to look for supplies of light red meranti in Singapore, but Chan was unable to get such supplies. P. G. Hase, the director of Malayan Timber & Trading Co. Ltd., Singapore, who was called by the defendant, testified that during the period June to September, 1960, it was unlikely that there was a surplus of light red meranti in sawmills in Singapore for new contracts, and that most of the sawmills in Singapore were tied to one or more exporters by constant dealings. He added that his company was the largest exporter of timber in Singapore and Malaya combined. As I was satisfied that the plaintiffs could do nothing to mitigate the loss suffered by them I assessed damages at $16,200.

For the above reasons I gave judgment for the plaintiffs for $23,805.82 and costs of the claim and dismissed the counterclaim with costs.

Judgment for the plaintiffs.

Solicitors: *D. G. Ironside*; *Braddell Bros.*

WICKRASOORIYA v. PUBLIC PROSECUTOR

[A.Cr.J. (Ismail Khan J.) March 31, 1964]

[Malacca — Criminal Appeal No. 19 of 1963]

Penal Code, s. 408 — Criminal breach of trust by servant — Failure to credit company with amounts received — Witholding vouchers — Dishonest intention — Inference from surrounding circumstances.

The appellant an accountant employed by Sime Darby & Co., Malacca, was convicted on two charges of criminal breach of trust in respect of monies he had received and payable to the company. It was his duty, *inter alia*, to receive monies payable to the company, to bank them and to keep proper accounts. The two sums involved in this case related to credit sales by the company, the vouchers for which were removed by the appellant from the office without authority.

Held: (1) mere non-accounting or temporary retention of money was not an offence unless there was dishonest intention;

(2) in this case the only inference that could be drawn from the surrounding circumstances was that the appellant deliberately withheld the vouchers to ensure that the amounts involved were not credited to the company accounts while he retained the money and that his intention in doing so was dishonest.

Cases referred to:—

(1) *Emperor* v. *Chaturbhuj Narain Choudhury* A.I.R. 1936 Patna 350; 37 Cr. L.J. 877.

(2) *Harakrishna Mahatab* v. *Emperor* A.I.R. 1930 Patna 209; 31 Cr. L.J. 249.

(3) *Crown* v. *Dina* A.I.R. 1925 Lahore 411; 26 Cr.L.J. 149.

CRIMINAL APPEAL.

D. A. Devadason for the appellant.

Abdul Razak bin Dato' Abu Samah (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The appellant was tried on three charges before the President, Sessions Court, Malacca. The charges were:—

"*1st Charge:* That you on or about the 17th day of January 1962 at Malacca in the State of Malacca, being a servant in the employment of Sime Darby and in such capacity entrusted with certain property to wit, $39.70 cash committed criminal breach of trust in respect of the said property and thereby committed an offence punishable under section 408, Penal Code.

2nd Charge: That you on or about the 15th day of January 1962 at Malacca in the State of Malacca, being a servant in the employment of Sime Darby and in such capacity entrusted with certain property to wit, $12.00 cash committed criminal breach of trust in respect of the said property and thereby committed an offence punishable under section 408, Penal Code.